



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF NOVEMBER 21, 2002**

**CALL TO ORDER:** Chairperson Manuel called the meeting to order at 7:10 p.m.

**PRESENT:** Chairperson Manuel, Commissioners Arneson, Cohen, Harrison, Thomas, Weaver, Wieckowski

**ABSENT:** None

**STAFF PRESENT:** Dan Marks, City Planner  
Michael Barrett, Senior Deputy City Attorney  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Mark Eads, Video Technician

**APPROVAL OF MINUTES:** None

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1 AND 2:

IT WAS MOVED (WEAVER/WIECKOWSKI) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1 AND 2:

**ITEM 1. DHAM RESIDENCE GRADING & LANDSCAPING – 1130 Highland Terrace – (PLN2003-00041)** – to consider a Planned District Minor Amendment to P-96-11 and Preliminary Grading Plan for changes to grading and landscaping for a previously approved new single family residence. This project is categorically exempt from CEQA review under Section 15303, New Construction or Conversion of Small Structures. (Continued from October 24, 2002 and to be continued to an unspecified date.)

**CONTINUE TO AN UNSPECIFIED DATE.**

**Item 2. WALMART EIR – 3045 Skyway Court – (PLN2000-00070)** - to consider Certification of an EIR (SCH#2001082059), a Conditional Use Permit, Preliminary Grading Plan and Planned Sign Program for a 155,652 square foot Wal-Mart store located at 3045 Skyway Court at the intersection of Osgood Road and Skyway Court in the Industrial Planning Area (Wal-Mart Store Inc., PLN 2000-0070, MIS 2000-0308). An Environmental Impact Report (*PLN2001-00290*) was prepared and circulated for this project for 45 days, beginning June 28, 2002 and concluding August 12, 2002.

**CONTINUE TO DECEMBER 12, 2002.**

The motion carried by the following vote:

AYES: 7 – Arneson, Cohen, Harrison, Manuel, Thomas, Weaver, Wieckowski  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

## PUBLIC COMMUNICATIONS

### ORAL COMMUNICATIONS

## PUBLIC HEARING ITEMS

## MISCELLANEOUS ITEMS

- ITEM 3. **MARLAIS GENERAL PLAN AMENDMENT – 43352, 43360, 43364 Mission Boulevard – (PLN2002-00100)** – Appeal of Staff's Determination that a historical evaluation is required in order to complete the Initial Study for the project.

Lauren Marlais, property owner, corrected page 4, second paragraph, to read, "Staff believes one ~~or more~~ of the buildings . . ." She stated that only the structure at the back of the property was in question. She gave reasons why the appeal should be upheld, as follows:

- Structure in question was not 60 years old at time of application
- Structure was altered to the extent that it would not qualify for either State or National Registers, as stated by Robert Mackinson
- Since front building had no historical significance, it was inferred that building in the back did not have historical significance either
- Structure not listed on any register of California Historical Resources
- Structure did not add to historical ambiance of Mission San Jose
- Site not significant representation of Olive Hyde, local historical Mission San Jose resident

She continued with a summary of events concerning the property. Through research, it was determined that the structure was built in 1942, which made the building 59 years old at the time of the General Plan amendment request. Robert Mackinson, State Office of Historic Preservation, stated in a letter that the alterations of the structure would make it an unlikely candidate for any historic list at a state or federal level, no matter who had owned it. HARB member and Secretary of Historical Society Al Minard walked the property and came to the same conclusion, as stated in his letter. Phil Holmes also wrote a letter stating that he had also come to the same conclusion.

Commissioner Wieckowski asked how the Commission knew that the applicant's conclusions were correct if an evaluation by an historical architect was not performed. He noted that staff had not been able to see the interior of the building in question. He asked how it was assumed that a building originally owned by Olive Hyde had no historical significance

Ms. Marlais stated that staff would have been allowed to enter the structure, but no one had ever asked. She believed that "all this" would have been avoided if Bruce Anderson had originally come to them and asked to walk the property and to examine the structures. She assumed that the company who did the historical research knew the property's tie to Olive Hyde and the front building was not deemed important enough to include on the Historic Resource list.

Commissioner Wieckowski stated that he did not know the criteria by which a structure was considered historical. He would be more comfortable allowing demolition of the structure if an objective historical evaluation was made that concluded the applicant's assumptions were correct. He posited that Olive Hyde could have given music lessons in the original structure to some "famous pianist." He believed that an evaluation would erase any questions concerning the potential historical significance of the building.

Ms. Marlais replied that this would be one of the youngest structures to undergo historical evaluation and that these buildings were a “temporary place” until Olive Hyde built her art gallery. After it was built, she sold the property on which these buildings were located.

Chairperson Manuel opened the public hearing.

Sandra Motley, 32-year resident, complimented the Commission for its “wise decision” with regard to its vote against the new Jack-in-the-Box that was not located on Stevenson Boulevard. She spoke in favor of the appeal, as she believed that the structure did not meet historical criteria, as noted by the Office of Historical Preservation.

Kathy Fox, Fremont resident, read a letter from the Marlais’ attorney, Kathryn M. Carroll. It stated that the City’s decision was based on “an erroneous, uninformed and cursory examination of the property by Bruce Anderson.” She believed that an historic evaluation by an expert of the City’s choosing was unwarranted.

Planning Manager Marks asked that he be allowed to examine one of the packets given to the Commission by the applicant.

Commissioner Harrison asked if timing was one of the reasons why an historical evaluation was not wanted. He stated that the letters by Al Minard and Phil Holmes weighed heavily in his attempt to come to a decision.

Ms. Marlais replied that timing was one of the reasons. However, she believed they had gathered all the information that was available and she did not believe any more could be found by anyone. When the age of the structure was incorrectly estimated, they decided to put a hold on the proceedings and to gather their own evidence to prove the age and history of the structure.

Commissioner Thomas asked if the cost of the historical evaluation was part of the reason for the appeal and she asked what the applicants had been told by the City. She wondered why they did not agree to the City hiring an expert to perform the historical evaluation at the time they were told that they could not hire someone on their own, as they would be one and one-half years ahead of where they were at this time.

Ms. Marlais agreed that the cost was a factor. They believed that if they could hire someone on their own, the cost would be less than someone hired by the City. Since they had performed the research that they believed would probably be done by an historical architect, they did not feel hiring such an expert was necessary. She did not know the cost of an historical evaluation performed by someone hired by the City.

Commissioner Cohen asked if the Commission upheld the appeal, would the applicants allow the City access to the interior of the structure in question.

Ms. Marlais stated that they would.

Chairperson Manuel closed the public hearing.

Commissioner Thomas asked what the historic evaluation cost was.

City Planner Marks replied that the cost of an historic evaluation would be between \$2,000 and \$5,000. Because much of the work had already been done by the applicant, he opined that their cost of an historical evaluation would be lower than average.

Commissioner Harrison asked what the timeframe would be.

City Planner Marks replied that an historical evaluation would take weeks, not months.

Chairperson Manuel asked what additional information would a consultant look for that had not already been provided by the applicants.

City Planner Marks stated that the structure would be assessed from an historic architecture view. Records would be accessed, some of which, clearly, the applicants had found. The record would be pulled together in a monograph.

Chairperson Manuel asked if the consultants could explore several different avenues that the Marlais might not have found on their own.

City Planner Marks stated that he would expect that to happen, but he did not know. He knew consultants looked at building records, county records, historic records and old newspapers, which he knew the Marlais' had already done.

Commissioner Thomas asked if a photo record would be part of the report.

City Planner Marks replied that photos would be a separate process. If the property was found historically significant and the building was to be demolished, a mitigation would be a HARB study, which was a photographic historical record of the building and cost would be \$1500 to \$2000.

Commissioner Harrison asked if there would be enough historical assurance to uphold the appeal, if City staff had access to the building and that information was combined with the information that the applicants had provided.

City Planner Marks stated that no one on staff was able to make that kind of assessment. He acknowledged that HARB Member Minard and Mr. Holmes knew a lot of City history and they were very well regarded by staff. However, neither was an architectural historian. However, the Commission would decide that the information provided by the Marlais' was enough to make that kind of decision.

Commissioner Thomas felt torn and but would vote to deny the appeal, because she believed that a more complete record needed to be accumulated. She expressed regret that this situation had dragged on for so long. She believed the best decision would be to have the evaluation performed so that the applicants could move on with their plans for the property.

Commissioner Harrison believed in Mr. Minard's and Mr. Holmes' expertise. Many of the homes in the City would soon be 60 years old and many of them would not have historical value. He would vote to uphold the appeal. He agreed with the suggestion in Mr. Minard's letter that a plaque be placed on the property to commemorate its ownership by Olive Hyde.

Commissioner Wieckowski asked if the applicants' letters and information was part of the public record.

City Planner Marks stated that the packets that the City provided to the Commission was all that the City had. Since the Commission and staff now had the additional information provided by the applicants, it was part of the public record.

Commissioner Cohen summarized that the action that was to be taken by the Commission was to determine whether the applicant should be required to obtain an historical evaluation of their property. In turn, the City would determine if there was a significant impact on the environment.

City Attorney Barrett clarified that to uphold the appeal, the Planning Commission would have to find that there was no substantial evidence that the project or any of its aspects would cause a significant effect on the environment.

City Planner Marks stated that the outcome of an appeal that was upheld by the Commission would be that staff would prepare a study that stated that there would no be substantial impact on the environment.

Commissioner Cohen questioned why the City, after accessing the property, could not use all of the evidence that had been presented to make the determination that there would be no substantial impact on the environment.

Planning Manager Marks stated that if the appeal were upheld, the City would not have the option of seeking further analysis; it would have to come to a conclusion based upon what was presently offered.

Commissioner Cohen asked if the current information could be supplemented by staff walking through the property and then making its decision. He was not ready to pass judgement on whether demolition of this building would have a significant impact. However, he believed that the information provided by the Marlais' (which included the information from Mr. Holmes and Mr. Minard) was adequate on which to make a decision regarding the historical significance of the structure. He recalled reviewing similar studies that had less information than the Commission currently had at hand. He would uphold the appeal.

Commissioner Wieckowski wondered if there was enough evidence before the Commission to make that kind of decision. He agreed with Commissioner Cohen's arguments and stated that he hesitated to help bring down the "heavy hand of government." He was not sure how he would vote.

Chairperson Manuel asked if the applicant had been asked for more information and what the normal procedure would be.

City Planner Planning Manager Marks stated that Bruce Anderson knew more than anyone else on staff and he was the one who looked at the property. If an historic evaluation was performed, it would be peer reviewed.

Chairperson Manuel asked if the appeal were upheld, would a precedent be set where others might do similar research in the future and then expect the City to accept their conclusions.

City Planner Marks opined it could happen, but chances were relatively slim, as this kind of disagreement rarely came before the City.

Chairperson Manuel decided that since no architectural historian had given his determination regarding the property, she would vote to deny the appeal.

Vice Chairperson Arneson stated that she believed that the historic evaluation should be performed, but as a compromise, it should not duplicate the applicants' work.

City Planner Marks could not say that the cost of an historic evaluation would be very much less than the average minimum of \$2000.

Vice Chairperson Arneson believed that the biggest benefit to the City would be the information that would be added to the City's historical archives.

Commissioner Weaver would vote to deny the appeal, because she feared that a precedent could be set for others who might not do as thorough a review as this applicant had performed.

Commissioner Wieckowski asked if the appeal was granted, would there be any “menacing historical groups” that could sue the City because of the Commission’s decision.

Planning Manager Marks replied that when the Negative Declaration and the General Plan amendment came back to the Commission, any opposing groups would then have a chance to be heard.

Commissioner Cohen believed that Mr. Minard and Mr. Holmes could be relied upon to know what they were writing about, but he could support a compromise which could be reached by having expertise from the historical architectural perspective.

Chairperson Manuel stated that she would vote to deny the appeal, because of she was afraid of setting a precedence, as Commissioner Weaver mentioned. There could be many issues that would not come to light unless an appropriate party performed the assessment.

Commissioner Thomas opined that the applicants probably had spent close to \$2000 performing their research and, surely, their work would be taken into consideration by the person hired to perform the study. She would vote to deny the appeal.

IT WAS MOVED (THOMAS/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (4-3-0-0) THAT THE PLANNING COMMISSION **DENY APPEAL.**

The motion carried by the following vote:

AYES: 4 – Arneson, Manuel, Thomas, Weaver  
NOES: 3 – Cohen, Harrison, Wieckowski  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

#### **Information from Commission and Staff:**

- Information from Staff:
  - City Planner Marks announced that on Saturday, November 23<sup>rd</sup>, at 9:00 a.m., the historical evaluation for the first 100 City properties would be made public at the newly renovated Niles Veterans building.
  - A study session would occur before the next Planning Commission meeting on December 12<sup>th</sup> to review the Irvington Concept Plan.
  - Chairperson Manuel asked if a list of the first 100 historic properties was available.

Planning Manager Marks promised to make it available at the next meeting.

- Information from the Commission:
  - Vice Chairperson Arneson stated that she had been contacted by people who had issues with sidewalk replacement where asphalt was used rather than concrete. She was also told of a City 50/50 program that shared the cost of concrete replacement with property owners. She asked that staff research and consider how to solve the concrete/asphalt problem and how to make the 50/50 program more accessible.

City Planner Marks replied that he understood that concrete sidewalks were replaced with concrete. However, it sometimes took several years to get to an area. A pilot program was the 50/50 program that involved only tree root problems, which, it was hoped, the waiting for sidewalk repair would be expedited. The 50/50 program would be expanded, because of the long list of people waiting to take advantage of it. He promised to look into the asphalt problem.

Senior Deputy City Attorney Barrett stated that the City replaced damaged sidewalks 100% and the 50/50 program was implemented to accelerate replacement. Sometimes asphalt was used because the public safety was an issue and there were insufficient funds to use concrete.

Commissioner Thomas agreed that asphalt was installed as a safety issue rather than concrete. She believed the "asphalt was a temporary fix."

- Commissioner Weaver announced that she would attend the next meeting, but would be late for the study session.

Meeting adjourned at 8:10 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

Dan Marks, Secretary  
Planning Commission